



COMMITTEE FOR ACCURACY IN MIDDLE EAST REPORTING AND ANALYSIS

BACKGROUNDER: THE PALESTINIAN CLAIM TO A “RIGHT OF RETURN”

BY: ALEX SAFIAN, PHD / SEPTEMBER 1, 2000



Do Palestinians who fled Israel in 1948, and their descendants, have a legal or moral right to return to their former homes in Israel? Is it true that most other refugees around the world have already exercised such rights of repatriation? Palestinian spokesmen, and groups including Amnesty International, have repeatedly asserted that Palestinians do have a legal and moral right to return to Israel. Most legal authorities, however, contend that the relevant legal instruments, including UN General Assembly Resolution 194, and the Universal Declaration of Human Rights, offer no support for these claims. Moreover, many analysts have pointed out that because an Arab and Palestinian-initiated war against Israel created a similar number of Jewish and Palestinian refugees, and because Israel settled the Jewish refugees, the Arab side should settle the Palestinian refugees.

A Sampling of the Palestinian Claims

- A press release for a September 16th Right of Return rally in Washington, DC demands:

... implementation of the right of Palestinian refugees to return to the homes and lands from which they were expelled. ... The right of refugees to return to their homes is enshrined in the Universal Declaration of Human Rights, International law, and in UN Resolution 194. (Palestine Right to Return Coalition, August 24, 2000)

- A similar press release by the American-Arab Anti-Discrimination Committee asserts:

... Palestinian refugees have an absolute, inalienable and individual human right to return to their original homes and country. This right is enshrined not only in the Universal Declaration of Human Rights and the Fourth Geneva Convention, but more specifically in UN Resolution 194, for which the United States voted. (September 14, 2000)

- A letter from Amnesty International USA signed by its Executive Director, William Schultz, explains that Amnesty's official sponsorship of the Right of Return rally:

... is based on the fact that our mandate opposes forcible exile. ... The right of refugees to return is guaranteed in the Universal Declaration of Human Rights Article 13(2) which states: “Everyone has the right to leave any country, including his own, and to return to his country.”

Amnesty thus bases its stand on discredited claims that Israel expelled the Palestinians and on a misinterpretation of the Universal Declaration. Amnesty staffer Marty Rosenbluth, who has repeatedly signed extremist ads declaring that “the Zionist structure of the state of Israel is at the heart of the racism and oppression against the Palestinian people and should be dismantled,” was the Amnesty International speaker at the rally.

• UN General Assembly Resolution 194 (December 11, 1948)

The key document cited by supporters of a Palestinian right of return is Resolution 194, passed in the wake of the first Arab-initiated war against Israel. The supporters cite the resolution despite the fact that the Arab states continually violated its central provision, which called for the creation of a Conciliation Commission and:

... establishment of contact between the parties themselves and the Commission at the earliest possible date ... to seek agreement by negotiations [and thereby reach] a final settlement of all questions between them. (paragraphs 4 and 5)

Through many years and multiple wars, the Arab states refused even to meet with Israel, much less try to reach a peaceful settlement. The only clause the Arab side ever acknowledged was paragraph 11, which suggested (it could not “require,” since it was a General Assembly rather than a Security Council resolution) that:

refugees wishing to return to their homes and live at peace with their neighbors **should be permitted** to do so at the earliest practicable date ... [R]epatriation, resettlement and economic and social rehabilitation of refugees and payment of compensation [should be facilitated]. (emphasis added)

Because this only recommends that refugees be permitted to return, it can hardly be characterized as creating a “right.” Moreover, the requirement that returnees first accept living “at peace with their neighbors” meant that Palestinian returnees would have to accept Israel’s right to exist, something that very few of them, even today, seem truly willing to do. Further, it did not even hint at any return rights for descendants of refugees.

It should also be noted that (1) the resolution applies equally to Palestinian refugees from Israel and to the similar number of Jewish refugees from Arab countries who came to Israel after 1948, and (2) that it placed repatriation, resettlement, and payment of compensation on an equal footing. This equal footing was also included in other GA resolutions of that era, such as Resolution 393 of December 2, 1950, which stated that:

... without prejudice to the provisions of paragraph 11 of General Assembly resolution 194 ... the reintegration of the refugees into the economic life of the Near East, either by repatriation or resettlement is essential ... for the realization of conditions of peace and stability in the area.

Similarly, Resolution 394 of December 14, 1950 called upon:

... the Governments concerned to undertake measures to ensure that refugees, whether repatriated or resettled, will be treated without any discrimination either in law or in fact.

And Resolution 513 of January 26, 1952, speaks of “reintegration either by repatriation or resettlement.” It is therefore quite clear from the plain language of these resolutions that the General Assembly did not even try to establish a binding right of return.

• All Arab States Voted Against Resolution 194

All the Arab states voted against Resolution 194, precisely because it did not establish a “right of return,” and because it implicitly recognized Israel. It is disingenuous, at best, for those same Arab states (and Palestinian representatives) to see today in Resolution 194 the right of return they formerly claimed did not exist.

• It is the Arab States that have violated UN Resolutions and the UN Charter

Despite present-day appeals to UN resolutions by the Arab states, it was the Arab states which violated all of the above resolutions, by making war against Israel, by forcing the Palestinian refugees to live in squalid refugee camps, by refusing to offer them citizenship (with the exception of Jordan, which did so not for humanitarian reasons, but to absorb the West Bank, which it had conquered, occupied and annexed), by discriminating against them (Resolution 394) “in law and in fact,” and by forcibly preventing (Resolution 393) “the reintegration of the refugees into the economic life of the Near East.” The Arab states did this because they were determined to exterminate Israel, or failing that, to prevent (Resolution 393) “the realization of conditions of peace and stability in the area.”

So extreme was the Arab position that the former director in Jordan of UN aid to the Palestinians, Ralph Galloway, stated:

The Arab states do not want to solve the refugee problem. They want to keep it as an open sore, as an affront to the United Nations and as a weapon against Israel. Arab leaders don't give a damn whether the refugees live or die. (Ralph Galloway, UNRWA, as quoted by Terence Prittie in *The Palestinians: People History, Politics*, p 71)

Of course, beyond the refugee weapon the Arabs also used military weapons to make war against Israel, violating Resolution 181 (the Partition Resolution), and the UN Charter, which calls upon members to:

- .. settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. (UN Charter, Article 2(3))
- .. refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state ... (UN Charter, Article 2(4))

Finally, the Arab states have for more than 50 years violated Resolution 194 by refusing to pay compensation to Jewish refugees whom they drove out of their countries.

• The Universal Declaration of Human Rights (December 10, 1948)

Amnesty International bases its support of a Palestinian right of return on the Universal Declaration of Human Rights. AI, and many pro-Palestinian groups, cite Article 13, paragraph 2 of the Declaration, which states:

Everyone has the right to leave any country, including his own, and to return to his country.

However, most international legal authorities concur both that the Universal Declaration is not legally binding (Nathan Feinberg, *The Arab-Israeli Conflict in International Law*, p 106), and that, even if it were, Article 13 would not establish for Palestinians a right of return.

There are at least three independent reasons for Article 13's limitations:

1. The clause "return to his country" was never intended to establish a right of return, rather it was added to underscore the right to leave. According to its legislative history Article 13 was aimed at governments that, in effect, imprisoned certain subgroups of their nationals by preventing them from leaving – Jews in Eastern Europe or the Soviet Union, for example. The clause "and to return to his country" was added at the last minute, according to its sponsor, in order to assure that "the right to leave a country, already sanctioned in the article, would be strengthened by the assurance of the right to return." (Jose Ingles, *Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, Including His Own, and to Return to His Country*, UN Doc E/CN.4/Sub.2/220/Rev.1, 1963)

Indeed, in the above-mentioned UN study of the Universal Declaration by Ingles, nowhere are the Palestinian refugees, or any other refugees, mentioned as coming under the purview of Article 13. All of the study's examples involve people who were prevented from leaving their country based on such factors as race or color, sex, language, religion, political opinion, etc.

2. Article 13 speaks of the right to "return to his country," but the Palestinians who were displaced by the war were never citizens or even legal residents of Israel. (Kurt René Radley, *The Palestinian Refugees: The Right to Return in International Law*, *The American Journal of International Law*, V72, 1978, p614) For this reason alone Article 13 would not apply to them.

3. Finally, other clauses of the Declaration argue *against* a Palestinian right to return. For example, Article 29 states:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (Article 29, paragraph 2)

Clearly, the "rights" and "general welfare" of the great majority of Israel's citizens would not long survive the admission of some 4 to 5 million Palestinian refugees (for this is the number of refugees that the Palestinians now claim) who neither owe the country allegiance nor identify themselves as Israelis.

Also relevant, for this reason, is paragraph 3, which states:

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

But destroying Israeli sovereignty via the right of return would clearly violate the principles of the UN Charter, specifically Article 2, paragraph 1, which states:

The organization is based on the principle of the sovereign equality of all its members. (Article 2, paragraph 1)

In the same manner, a mass Palestinian right of return would also violate Article 30 of the Universal Declaration of Human Rights, which states:

Nothing in this declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

That destruction of Israel – and the rights and freedoms of Israelis – would be the goal of repatriated Palestinian refugees was, in the past, explicitly admitted by Arab leaders. For example, the post-war Egyptian Foreign Minister, Muhammad Salah al-Din, declared:

... in demanding the return of the Palestinian refugees, the Arabs mean their return as masters, not slaves; or to put it quite clearly – the intention is the extermination of Israel. (Al-Misri, 11 October 1949, as quoted by N. Feinberg, p109)

Similarly, Egypt's President Nasser stated:

If the refugees return to Israel, Israel will cease to exist. (*Neue Zuercher Zeitung*, September 1, 1960, as quoted by Prittie)

• UN Security Council Resolution 242 (November 27, 1967)

With regard to refugees, Resolution 242 calls only for “achieving a just settlement of the refugee problem,” without defining just what such a settlement might entail, and without referring to any earlier UN resolutions. Resolution 242 therefore offers no support for a Palestinian “right of return.”

• The Fourth Geneva Convention (October 21, 1950)

The other international instrument cited by supporters of a Palestinian right of return is the Fourth Geneva Convention, specifically its Article 49, which allows a “belligerent occupant” to temporarily evacuate occupied areas but requires that the evacuees:

... be transferred back to their homes as soon as hostilities in the area in question have ceased.

Again, this instrument does not create for Palestinian refugees a right of return, first for the technical reason that it came into effect only on October 21, 1950, well after the end of the first Arab-Israeli War. But there are also weightier reasons for the Convention's inapplicability to the Palestinian refugee problem:

1. The Palestinian-Israeli struggle was a civil conflict, while the Convention dealt almost exclusively with international conflicts. (Radley, p 597)
2. In accord with its international focus, the Convention delineated the rights and obligations of “belligerent occupants.” However, again because of the civil nature of the struggle between Palestinian Jews and Palestinian Arabs within the territory of the Palestine Mandate, Israel was not and is not a “belligerent occupant.”
3. Article 3 of the Convention, the only one explicitly applicable to “conflicts not of an international character,” makes no mention of refugees or expelled persons, and requires only, as Radley puts it, “a minimum standard of treatment for noncombatants.” (Radley, p 599)

• How have other refugee problems been resolved?

The 20th century witnessed numerous large-scale and persistent refugee problems, all of which were eventually resolved through integration rather than repatriation. Thus according to Dr. Elfan Rees, Advisor on Refugees to the World Council of Churches:

No large scale refugee problem has ever been solved by repatriation, and there are certainly no grounds for believing that this particular problem [the Palestinian refugee problem] can be so solved... The facts we must face force us to the conclusion that for most of the world's refugees the only solution is integration where they are. (Dr. Elfan Rees, *Century of the Homeless Man*, as quoted in Radley, p 611-612)

Examples of refugee problems settled via integration or resettlement include:

1. At the conclusion in 1923 of the Greek-Turkish War, harsh treatment of Greek communities in Turkey caused large numbers of these Turkish Greeks to flee their homes. Because of this, the peace treaty between the two sides provided for a mutual exchange of populations – about 2 million Greeks who had been Turkish citizens were relocated to Greece, while about 500,000 Turks who had been Greek citizens were relocated to Turkey. The immovable property left behind was seized by the respective Governments and was used, in part, to resettle the incoming refugees. (Eyal Benvenisti and Eyal Zamir, *Private Claims to Property Rights in the Future Israeli-Palestinian Settlement*, *The American Journal of International Law*, April 1995, p 322)
2. The Potsdam Declaration imposed by the Allies following World War 2 provided for the transfer to Germany of approximately 15 million Germans, particularly from those parts of eastern Germany which after the war were allotted to Poland. Under the Declaration the German populations in Poland, Czechoslovakia, Hungary and Austria were relocated to Germany, these German refugees lost title to the property they left behind, and no arrangements were made to compensate them for their losses. (Benvenisti and Zamir, p 322)
3. Settlement of the conflict between Hindus and Muslims in British India via division of the region into India and Pakistan required relocation of millions of people. Once again, immovable property left behind by these refugees was seized by the respective governments to help settle the incoming refugees. (Benvenisti and Zamir, p 323)

● Other Relevant Issues Commonly Ignored or Distorted

● The cause of the Palestinian refugee problem

Many reporters have uncritically accepted Palestinian claims that there are today roughly 4 or even 5 million Palestinian refugees, and that these people were somehow expelled from Israel. Recent research by Israeli scholars (Efraim Karsh, *Fabricating Israeli History: The New Historians*; Shabtai Tevet, *The Palestine Arab Refugee Problem and its Origins*, *Middle Eastern Studies*, April 1990; Anita Shapira, *The Past is not a Foreign Country*, *New Republic*, November 29, 1999) have thoroughly discredited authors such as Benny Morris and Ilan Pappé who had charged Israel with mass expulsion of Palestinians during the 1948-49 Arab-Israeli war.

Consider the case of Haifa, whose Arab population numbered 62,500 in 1947, but by May 1948 had dwindled to almost nothing, accounting for one-tenth of the Palestinian refugees. The question, of course, is “Were the Palestinians Expelled?” As it happens, this is the title of Professor Karsh’s latest work, wherein he concludes:

in Haifa, one of the largest and most dramatic locales of the Palestinian exodus, not only had half the Arab community fled the city before the final battle was joined, but another 5,000 – 15,000 apparently left voluntarily during the fighting while the rest, some 15,000 – 25,000 souls, were ordered or bullied into leaving against their wishes, almost certainly on the instructions of the Arab Higher Committee. The crime was exclusively of Arab making. There was no Jewish grand design to force this departure, nor was there a psychological “blitz.” To the contrary, both the Haifa Jewish leadership and t

he Hagana went to great lengths to convince the Arabs to stay.(*Commentary*, July-August, 2000)

What happened in Haifa was typical; the vast majority of Palestinian refugees were not forced out, but fled, at times despite the counsel of their Jewish neighbors to stay. The Palestinian refugee problem was caused by a war that was initiated by the Palestinians themselves and by the five Arab states whose armies invaded Israel the day it declared independence. Had the Palestinians and the Arab states not attacked Israel and attempted to destroy it, there would not have been a single Palestinian refugee.

It should also be remembered that the roughly 550,000 Palestinian refugees created by the war were not alone – there were a similar number of Jewish refugees from Arab countries. At great expense and effort the newly born state of Israel settled these Jewish refugees. Unfortunately, the Arab states, many of them flush with oil wealth, made no such effort, often acting to keep the Palestinian refugees in festering poverty, all the better to use them as a weapon against Israel.

● The Palestinian refugees today

As of June 30, 1998 there were 3,521,130 Palestinian refugees, according to the “Report of the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East – 1 July 1997 – 30 June 1998,” (Table 1). However, the report also states that:

UNRWA registration figures are based on information voluntarily supplied by refugees primarily for the purpose of obtaining access to Agency services, and hence cannot be considered statistically valid demographic data; the number of registered refugees present in the Agency’s area of operations is almost certainly less than the population recorded.

Moreover, not only does the UN admit the figures are of doubtful accuracy, there being obvious reason for families to claim more members and thereby receive more aid, the UN also admits that the total includes 1,463,064 Jordanian citizens, who cannot by any stretch be considered refugees. Indeed, if they are refugees, then the more than 500,000 Jewish refugees from Arab countries who came to Israel after 1948 were nonetheless still refugees even after receiving Israeli citizenship, as are their descendants (since, in these claims, descendants of Palestinian refugees are themselves considered refugees). That is, there would be in Israel today at least 2 million Jewish refugees from Arab countries. Whether or not one accepts that the descendants of refugees are themselves refugees, if the claims of the Palestinian refugees are now being discussed, so should the claims of these Jewish refugees.

● Arabs refused Israel’s 1949 offer to unconditionally admit 100,000 Palestinians

As a goodwill gesture during the Lausanne negotiations in 1949, Israel offered to take back 100,000 Palestinian refugees prior to any discussion of the refugee question. The Arab states, who had refused even to negotiate face-to-

face with the Israelis, turned down the offer because it implicitly recognized Israel's existence. (Nadav Safran, *Israel: The Embattled Ally*, Harvard University Press, p 336)

Despite this, on humanitarian grounds Israel has since the 1950's allowed more than 50,000 refugees to return to Israel under a family reunification program, and between 1967 and 1993 allowed a further 75,000 to return to the West Bank or Gaza. Since the beginning of the Oslo process Israel has allowed another 90,000 Palestinians to gain residence in PA-controlled territory.

- **Israeli compensation to Arabs who lost property; no Arab compensation to Jews**

Arabs who lost property in Israel are eligible to file for compensation from Israel's Custodian of Absentee Property. As of the end of 1993, a total of 14,692 claims had been filed, claims had been settled with respect to more than 200,000 dunums of land, more than 10,000,000 NIS (New Israeli Sheckels) had been paid in compensation, and more than 54,000 dunums of replacement land had been given in compensation. Israel has followed this generous policy despite the fact that not a single penny of compensation has ever been paid to any of the more than 500,000 Jewish refugees from Arab countries, who were forced by the Arab governments to abandon their homes, businesses and savings.